IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1392 of 2007

Mr.Asif Bashir Shaikh — Petitioner
Vs.
Mrs. Rahima Asif Shaikh
(Mrs.Rahima Abu Pansare) & ors. — Respondents

Mr.Kasim Y. Shaikh for petitioner.
Mr.D.P.Adsule, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 18, 2007.

P.C.

. Heard Mr.Shaikh, the learned counsel for the petitioner - husband. The respondent - wife had filed an application under Section 125 of Cr.P.C. claiming maintenance from the petitioner on the ground that he had deserved her and the said application came to be registered as Criminal Misc. Application No.14 of 1998. The petitioner filed reply and contended that he had given triple Talaq in the presence of two male Muslim witnesses on 20/1/1998 and, therefore, the application filed under Section 125 of Cr.P.C. was not maintainable. He also contended that provision was made for the compensation for Iddat period and Meher amount of Rs.1125/- fixed at the time of marriage was also paid to her instantaneously. On merits he had contended

that he was getting only Rs.2000/- per month and was unable to maintain himself.

. Before the trial Court the applicant - wife had stepped in the witness box. She stated that on 21/12/1997 she had received a telegram from her husband to resume cohabitation with him and accordingly she went to the house of her husband along with her brother. However, her in-laws did not allow her to enter the house and without assigning any reasons. She also contended that the petitioner - husband was demanding an amount of Rs.50,000/- from her parents and he used to harass her on account of which she had filed a complaint for the offence punishable under Section 498-A read with Section 34 of IPC. The accused have been convicted by the learned Judicial Magistrate, First Class at Kalyan in RCC No.50/98 as per the judgment and order dated 21/1/2003.

. To defeat the claim of the wife for maintenance for herself and for the minor child, the petitioner did not examine any independent witnesses and more particularly in support of his claim that he had given a valid Talaq to the applicant. He stepped

in the witness box and relied upon the Advocate's notice, the notice of the Kazi and the telegram etc. It was necessary for the petitioner to examine the Kazi in support of his plea that he had given a valid Talaq to the applicant on 22/1/1998 or any time thereafter. The learned Judicial Magistrate, First Class considering all these circumstances fixed the maintenance amount at Rs.500/- per month to each of the applicants with effect from 13/5/1998 as per the judgment and order dated 24/5/2000. The said order was challenged in Criminal Revision Application No.87 of 2000 which came to be dismissed by the learned 1st Ad-hoc Addl. Sessions Judge at Kalyan on 9/3/2006.

. Admittedly the order of conviction and sentence passed by the learned Judicial Magistrate, First Class at Kalyan has as of now not been disturbed and it is stated that an appeal against the said order is pending before the Sessions Court. Be that as it may, the fact remains that the petitioner did not take any steps to examine the witnesses concerned in support of his plea that he had given a valid Talaq to the respondent no.1 at any time before the application was filed by her under Section 125 of Cr.P.C. and the trial Court also considered the

aspect of his monthly income. Both the Courts below have concurrently examined the financial capacity of the applicant and fixed the amount at Rs.500/- per month to each of the applicants. No interference is called for in the view taken by the learned Judicial Magistrate, First Class and confirmed by the Sessions Court. Hence the petition is rejected summarily.

(B.H.MARL